

BEFORE THE FOREST PRACTICES APPEALS BOARD
STATE OF WASHINGTON

MARY J. REPAR,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF NATURAL
RESOURCES and SKAMANIA COUNTY,

Respondent.

FPAB NO. 05-001

ORDER GRANTING
MOTION TO STRIKE
APPELLANT'S MOTION FOR
RECONSIDERATION

On June 28, 2005, the Forest Practices Appeals Board of the State of Washington (the Board) issued an Order Granting Summary Judgment to the respondents and dismissing the appeal of Mary J. Repar. Appellant Repar moves the Board to reconsider its dismissal. Respondents Skamania County and the Department of Natural Resources (DNR) join in moving the Board to strike Appellant Repar's reconsideration motion because it was not timely filed. Administrative Law Judge Cassandra Noble presided for the Board. In ruling on these motions, the following materials were considered:

1. Appellant's Motion for Reconsideration (received July 18, 2005).
2. Appellant's Certificate of Service (on the parties) (received July 18, 2005).
3. Appellant's Certificate of Service (on the Board) (received July 18, 2005).

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1 4. Respondent Skamania County's Motion to Strike Appellant's Motion for

2 Reconsideration (received July 18, 2005).

3 5. Appellant's Amendment to Appellant's Motion for Reconsideration (received July

4 20, 2005).

5 6. Appellant's Motion to Deny Respondent's Motion to Strike (received July 20, 2005).

6 7. Respondent Department of Natural Resources' Response to Respondent Skamania

7 County's Motion to Strike Appellant's Motion for Reconsideration (received July 20,

8 2005).

9 Based on the record submitted on the Motions to Reconsider and to Strike and the
10 arguments of Appellant and counsel for the other parties, the Board makes the following ruling:

11 **BACKGROUND FACTS**

12 On June 28, 2005, the Board issued its Order Granting Summary Judgment and Dismissal
13 of this appeal. As is the Board's practice, the decision was placed in the U.S. Mail the same day.
14 In its Summary Judgment, the Board found that it lacked jurisdiction to overturn a DNR decision
15 by challenging SEPA decisions made in the context of Skamania County's local project approval
16 process that had been completed and not appealed. The Board also rejected Appellant Repar's
17 other claims regarding real property ownership, alleged constitutional violations and the
18 Endangered Species Act. Also on June 28, 2005, the Board mailed its Order Granting Summary
19 Judgment to Appellant Repar and the other parties accompanied by a cover letter from Cassandra
20 Noble, Administrative Appeals Judge, Presiding, stating:

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1 This is a FINAL ORDER for purposes of appeal to Superior court within 30 days,
2 pursuant to WAC 223-08-260 and RCW 34.05.542.

3 The following notice is given per RCW 34.05.461(3): any party may file a petition for
4 reconsideration within 10 days and serve it on the other parties. The term “file” means
5 receipt.

6 (Emphasis added.)

7 A pre-hearing order was entered in this matter on March 18, 2005, Administrative
8 Appeals Judge, Phyllis K. Macleod, Presiding. Section VIII of the Pre-Hearing Order states as
9 follows:

10 “Filed,” means the date received by the Board.”

11 *Pre-Hearing Order, Section VIII, FPAB No. 05-00*

12 Appellant Repar accompanied her Motion for Reconsideration with two certificates of
13 service stating that she served the motion by mailing it to the other parties and the Board on July
14 14, 2005. The Board received the Motion for Reconsideration on July 18, 2005.

15 Skamania County and DNR oppose Repar’s Motion for Reconsideration and move the
16 Board to strike it as untimely. Respondents assert that the Board lacks jurisdiction to hear the
17 reconsideration motion because it was not filed within 10 days as is required by Board rules and
18 by the Administrative Procedures Act (APA).

19 ANALYSIS

20 WAC 223-08-255(2) authorizes timely filed motions for reconsideration:

21 After issuance of a final decision, any party may file a petition for reconsideration
with the board. Such petition must be filed within ten days of mailing of the final

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1 decision. The board may require an answer to the petition. Copies of the petition
2 for reconsideration, and an answer, if required, shall be served on the other parties
 of record.

3 WAC 223-08-255(2) (emphasis added).

4 Board rules provide that “filing” of a document means “...delivery and is effective upon
5 receipt...” (WAC 223-08-035(3)) and that “service” means, among other things, posting a
6 document in the U.S. mail (WAC 223-08-035(6)).

7 The above Boards rules are consistent with the APA provisions governing
8 reconsideration:

9 Within ten days of the service of a final order, any party may file a petition for
10 reconsideration, stating the specific grounds upon which relief is requested. The
 place of filing and other procedures, if any, shall be specified by agency rule.

11 RCW 34.05.470(1).

12 The APA defines ‘filing’ as “...the delivery of the document to a place designated by the
13 agency by rule for receipt of official documents, or in the absence of such designation, at the
14 office of the agency head.” RCW 34.05.010(6). ‘Service’ is also a defined term in the APA:

15 “Service,” except as otherwise provided in this chapter, means posting in the
16 United States mail, properly addressed, postage prepaid, or personal service.
17 Service by mail is complete upon deposit in the United States mail. Agencies
 may, by rule, authorize service by electronic telefacsimile transmission, where
 copies are mailed simultaneously, or by commercial parcel delivery company.

18 RCW 34.05.010(19) (emphasis added).

19 Appellant Repar asserts that she properly served the Board because she posted her motion
20 in the U.S. mail. However, both the APA and the Board rules clearly distinguish between *filing*

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1 and *service*. A motion for reconsideration must be properly and timely filed with the Board
2 within the ten-day period allowed. As the letter accompanying the decision stated, filing means
3 receipt.

4 To determine whether Ms. Repar's reconsideration motion was timely, the first inquiry
5 under the Board's rules is whether the filing was made within ten days of the Board mailing the
6 final decision. In this case, the Board mailed the Summary Judgment on June 28, 2005. This
7 commenced the ten-day period. According to her own declaration, Ms. Repar's Petition for
8 Reconsideration was not even mailed until July 14, 2005. *Repar Certificate of Service, July 14,*
9 *2005*. The Board then received Ms. Repar's Petition on July 18, 2005. Thus the Petition for
10 Reconsideration falls several days outside the ten day time limit required by WAC 223-08-255.

11 The result is the same under the APA, which requires that a motion for reconsideration be
12 filed within ten days of "service" of the final order. Both Board rules and the APA provide that
13 service by mail is complete upon deposit in the United States mail. In this case, service of the
14 Board's final order took place on June 28, 2005. The due date for delivery of a motion seeking
15 reconsideration was ten days thereafter, August 8, 2005 (August 7 being a Sunday). Thus, the
16 Motion for Reconsideration is untimely and the Board lacks jurisdiction to consider it.

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